Supreme Court, U.S.
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NO. 06-598

In the Supreme Court of the United States

DOUG HAGOOD,

Petitioner,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE

Respondent,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY BRIEF

K. CODY ALLISON
K. CODY ALLISON, ATTORNEY
315 DEADERICK STREET
SUITE 1550 AMSOUTH CENTER
NASHVILLE, TN 37238
(615) 244-3331

PHILLIP L. DAVIDSON
Counsel of Record
2400 CRESTMOOR ROAD
SUITE 107
NASHVILLE, TN 37215
(615) 386-7115

Counsel for Petitioner

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

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REPLY BRIEF

In their Brief in Opposition, Respondent claims that Petitioner, Mr. Hagood, does not challenge the independent alternative grounds for the underlying decision of the Sixth Circuit in this case. More specifically, that Mr. Hagood's Petition before this Court does not address the Sixth Circuit's ruling that his claim fails on its merits. However, the Sixth Circuit only addressed the allegations in Mr. Hagood's Complaint under a separate analysis of Title II of the ADA and failed to address the allegations under Title I.

In upholding and adopting the district court's ruling, the Sixth Circuit determined that employment discrimination claims are under the "exclusive province" of Title I of the ADA. The Sixth Circuit additionally ruled that Mr. Hagood's *Title I* claim should be dismissed for failure to state a claim because he was not a "qualified individual with a disability" and thus could not meet a threshold requirement for filing a claim *under Title I*. Therefore, the Sixth Circuit did not address the allegations in Mr. Hagood's Complaint under an analysis of Title I.

The Sixth Circuit then used this ruling with regard to the "exclusive province" of Title I coverage, to hold that Mr. Hagood could not bring a claim under Title II. Finally, the Sixth Circuit held that, even if Mr. Hagood's claim could be brought *under Title II*, his claim did not meet the requirements of a prima facie case of discrimination *under Title II*.

The Respondent erroneously claims that the district court held that even if Mr. Hagood had standing to sue "under the ADA", his claims would fail because the Respondent's program was fair and nondiscriminatory. (Brief in Opposition

at p. 6) However, the district court only made this ruling as it applies to Title II, not the ADA generally, as is asserted by the Respondent. (App. B at 3a-5a)

The district court nor the Sixth Circuit addressed the allegations in Mr. Hagood's Complaint under a Title I analysis. The district court and the Sixth Circuit simply stated that Mr. Hagood could not maintain an action under Title I because he did not meet the statutory definition of a "qualified individual with a disability" and therefore did not consider an analysis.

A RULING FOR PETITIONER'S COULD RESULT IN RELIEF UNDER TITLE I OF THE ADA.

If it is determined by this Court that Mr. Hagood can maintain an action under Title I of the ADA, Mr. Hagood will have the opportunity to have the merits of his claim addressed under Title I by the district court.

Title I of the ADA provides protections against discrimination which includes, "utilizing standards, criteria or methods of administration that have the effect of discrimination on the basis of disability; or that perpetuate the discrimination of others who are subject to administrative control." 42 U.S.C. § 12112(b)(3)(A)(B).

Mr. Hagood's Complaint alleges that other participants, who are placed into the same benefits program of the Respondent, are not disabled within the meaning of the ADA. He alleges that the non-disabled participants "disability" does not affect a major life activity and that they are able, and allowed, to work in a significant capacity, in addition to receiving the benefits under the program. He alleges discrimination because the effects of the program result in a

much lower economic benefit and standard of living for disabled participants, as compared the non-disabled participants. The discrimination occurs because the extreme lack of earning ability of the disabled program participants is not taken into account in the administration of the program. Thus, disabled and non-disabled participants are placed into the same program, which has the effect of a much lower standard of living for the disabled participants, such as himself.

When drafting protections for persons with disabilities under the ADA, this form of discrimination was contemplated by Congress. Congressional findings indicate that, "individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusion qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;" 42 U.S.C. § 12101(a)(5).

Mr. Hagood's Complaint allegations were never addressed by the district court nor the Sixth Circuit under an analysis of Title I of the ADA because of their ruling that he did not have standing under Title I to pursue his claim.

CONCLUSION

Mr. Hagood's Petition for Writ of Certiorari should be granted in order to determine who is a covered individual under Title I of the ADA and ultimately determine Mr. Hagood's claim under Title I of the ADA.

Respectfully Submitted,

Phillip L. Davidson
Counsel of Record
2400 Crestmoor Road, Suite 107
Nashville, TN 37215

K. Cody Allison
315 Deaderick Street
Suite 1550 AmSouth Center
Nashville, TN 37238

Counsel for Petitioner